XI-HC—78

(38)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक CR.A.No 301/07 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	APPELLANT	Hiralal Gond, S/o Lakhraj Gond, Aged 35 years, R/o village Majhartola, Police Station Sonhat, District Korea (M.P) (now C.G.).
		-Versus-
	RESPONDENT	State of Madhya Pradesh (now Chhattisgarh), Through Police Station Sonhat, District Korea (M.P) (now C.G).
	(Appeal under Section 374 (2) of the Cr.P.C.)	
	Division Bench :	
	Hon'ble Mr. L.C. Bhadoo &	
	Hon'ble Mr. Dhirendra Mishra, JJ	
	26-6-2007	
	Shri R.K. Jaiswal, counsel for the appellant.	
	Shri Sudhir Bajpai, Deputy Govt. Advocate for the State.	
	Heard on I.A.Nos.1 & 2 for condonation of delay in filing the appeal as well as on merit.	
	As per the office report there is a delay of 2996 days i.e. more than 8 years 2 months in filing the appeal.	
	It has been mentioned in the application that the father of the appellant took the original copy of the judgment for filing of appeal, but he died after some time and the appeal could not be filed due to the said reason. In this application it has not been mentioned that when the father of the accused died and after the death of his father why he did not ascertain whether any appeal has been filed or not against the impugned judgment,	

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therefore, there is no sufficient cause for condonation of delay of more than 8 years and 2 months in filing this appeal.

Apart from that, the prosecution case, in brief, is that on 16-4-1998 the accused along with his wife Man Kunwar (since deceased) and two children was at his house. He committed the murder of his wife by pressing her neck. Thereafter the accused himself lodged the merg intimation under Ex.P/8 on 17-4-1998 at about 8.30 a.m. in Police Station Sonhat to the effect that on 16-4-1998 his wife consumed liquor, he left the house at about 8.00 a.m., when he returned at about 11.30 a.m. his wife was lying in unconscious condition. He sprinkled water on her face and tried to wake her up, but she did not wake up, therefore, he informed the villagers namely Ram Kumar, Chetan & Somaru. Receiving this report, the Investigating Officer left for the scene of occurrence. After giving notice (Ex.P/1) to the panchas, prepared inquest (Ex.P/2) on the body of deceased Man Kunwar. He prepared site plan under Ex.P/3. One bottle of liquor was seized from the place of occurrence under Ex.P/4. Body of Man Kunwar was sent for postmortem examination to the Primary Health Centre, Sonhat under Ex.P/5 where Dr. J. Ekka (PW-7) conducted the postmortem and prepared report (Ex.P/6). Doctor opined that the mode of death was asphyxia due to throttling. The death was homicidal in nature. The accused Hiralal was also sent for medical examination to the Primary Health Centre, Sonhat under Ex.P/7 where Dr. J. Ekka examined and noticed that there was abrasion on the shoulder. The site plan (Ex.P/10) was prepared by the Patwari. Based on the postmortem report & merg intimation, First Information Report (Ex.P/11) was registered.

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After completion of investigation, charge sheet was filed in the Court of Chief Judicial Magistrate Baikunthpur, who in turn committed the case to the Court of Sessions Judge, Ambikapur, from where learned Additional Sessions Judge, Baikunthpur, District Korea, received the case on transfer.

In order to establish the charge against the accused/appellant, the prosecution examined 11 witnesses. Statement of the accused was recorded under Section 313 of the Code of Criminal Procedure.

Shri Jaiswal, learned counsel for the appellant, submitted that in this case there is no eyewitness. Deceased died on account of consumption of liquor, therefore, the accused has been convicted without any evidence.

On the other hand, Shri Bajpai, learned Deputy Govt. Advocate for the State, supported the judgment of the trial Court.

Having heard learned counsel for the parties, we have perused the evidence available on record. Ram Kumar (PW-1) has stated that the accused came and informed him that in the morning his wife was brewing liquor and she had consumed the same also, therefore, she is lying. When he went to the house of the accused along with him, he saw that she was lying dead and her eyes were coming out. Thereafter accused called Somaru & Chetan and he disclosed to them also that his wife was lying on account of consumption of liquor. Thereafter he left. In the next day morning the report was lodged. Shiv Prasad (PW-2) has also stated that the accused came at about 5.00 p.m. and informed that his wife writhing after consuming liquor and he asked him to come to his house and see her condition, then he said that as the *Barat* has already come, therefore, he is not in a position to go to his house. Next day morning the accused again came to his house to call

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him and then he along with Sukhlal & Bechu went to the house of accused. The house was locked. He asked the accused to open the lock, then accused opened the lock. He saw that the dead body of Man Kunwar was lying. Similar is the evidence of Bikham Ram (PW-3). Even the accused has admitted that he along with his wife and two children was at his house.

Dr. J. Ekka (PW-7), who conducted the postmortem, has stated that the death of Man Kunwar was due to asphyxia on account of throttling and was homicidal in nature. He has stated that he conducted the postmortem and saw that there was swelling on the eyes, blood was oozing out from the nozzles, mouth was open, tongue was between the tooth, there was swelling on the face, there was facial congestion and swelling around neck, there was swelling on the neck & chest, there was lacerated wound below the knee, wind pipe was congested & lungs were congested. The postmortem report is Ex.P/6.

Therefore, as per evidence of Dr. J. Ekka (PW-7), cause of death was asphyxia and not excessive consumption of liquor. The accused has admitted that he was present in the house. As per the evidence of Ram Kumar (PW-1), Shiv Prasad (PW-2) & Bihkam Ram (PW-3), the accused gave explanation that his wife was lying in unconscious condition after consuming liquor; therefore, the accused gave false explanation to these witnesses. Even the report lodged was also false. He gave same explanation before the Police. The presence of the accused is established. The cause of death was throttling.

In view of the above circumstantial evidence, the death of Man Kunwar was homicidal and the accused was the only person in the house.

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He has not explained the circumstances under which she died, therefore, involvement of the accused in the crime in question is established beyond reasonable doubt. From the above circumstances, only irresistible conclusion can be drawn that the accused was the author of the crime in question.

For the foregoing reasons, we are of the considered opinion that the appeal is liable to be dismissed on the ground of delay in filing this appeal as well as on merit and accordingly it is hereby dismissed.

Consequently, I.A.No.3 for suspension of sentence & grant of bail stands disposed of.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Dhirendra Mishra
Judge